

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SARAH BRYANT,
on behalf of herself and
others similarly situated,

Case No. 2:22-cv-11319

Hon. Laurie J. Michelson

Plaintiff,

v.

DOMINO'S PIZZA, INC.; DOMINO'S
PIZZA FRANCHISING, LLC; and
DOMINO'S PIZZA, LLC,

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

Plaintiff Sarah Bryant and proposed new Plaintiffs Justin Carroll, Patrick Barry, Jessica Majewski and Myron Talley, by and through their attorneys, file this motion and accompanying brief pursuant to Fed. R. Civ. P. 15(a).

Counsel contacted Defendants' Counsel to request written consent to file a First Amended Complaint to add newly named Plaintiffs to this lawsuit. Defendants declined to give consent.

WHEREFORE, Plaintiff respectfully requests that this Court grant this Motion; grant newly named Plaintiffs leave to file a First Amended Complaint to add Justin Carroll, Patrick Barry, Jessica Majewski and Myron Talley as named

Plaintiffs. The proposed First Amended Complaint and Jury Demand are attached as Exhibit 1 to this Motion for the Court's consideration.

Respectfully submitted,

/s/ David M. Blanchard

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Counsel for Plaintiffs and the Putative Collective

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**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

STATEMENT OF ISSUES PRESENTED

- I. Whether this Court should grant Plaintiff's request for leave to file a First Amended Complaint to add newly named Plaintiffs.

Plaintiff says: "Yes"

Defendants say: "No"

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Foman v. Davis, 371 U.S. 178 (1962)

Louisiana School Employees' Retirement System v. Ernst & Young, LLP, 622 F.3d 471 (6th Cir. 2010)

Duggins v. Steak N Shake, Inc., 195 F.3d 828 (6th Cir. 1999)

Moore v. City of Paducah, 790 F.2d 557 (6th Cir. 1986)

Fed. R. Civ. P. 15(a)(2)

I. PROCEDURAL HISTORY

Plaintiff Sarah Bryant filed this Complaint on June 14, 2022. On September 21, 2022, the Parties submitted a stipulation to Dismiss Named Plaintiff Bryant without prejudice and to request additional time to confer and develop a status report or proposed case management order. (ECF No. 38).

The Court granted this stipulation in part and entered a text-only order on September 25, 2023, providing that “Pursuant to the stipulation entered by the Parties, named Plaintiff Sarah Bryant’s Claims are hereby dismissed without prejudice. The Parties shall have 30 days from the entry of this order to stipulate to an Amended complaint or a new named plaintiff, or to advise the Court as to why the case should not be dismissed.”

The parties subsequently extended that time by stipulation for the explicit purpose to allow time for Defendant’s to identify opt-ins for which it contends arbitration agreements prohibit claims. On October 25, 2023, Court signed the stipulated order granting the extension to file an Amended Complaint or Motion for Leave to file an Amended Complaint to January 10, 2023. (ECF No. 39). The parties conferred and Defendants produced a variety of purported arbitration agreements that they may rely on for some but not all of the opt-in Plaintiffs. Counsel worked diligently to identify new lead Plaintiffs.

Therefore, pursuant to the Stipulation and Order, Plaintiff brings this Motion

for Leave to file a First Amended Complaint to name four new Plaintiffs to the existing Collective Action Complaint. Although the case has moved slowly since it was filed in 2022, there has been no substantial discovery and no undue prejudice would result to Defendant. Once Amendment is permitted, with the assistance of additional counsel, Plaintiffs expect to proceed expeditiously so that eligible collective members receive notice and can exercise their rights. Plaintiff sought concurrence from opposing counsel. It was denied.

One of the principal reasons this matter was stayed in late September 2023 was so that Defendants could identify which opt-in plaintiffs might have an arbitration agreement. After a month of Plaintiff's reaching out inquiring about the status of such arbitration agreements, the list was finally provided December 11, 2023. After receiving this information from Defendants, Plaintiff's counsel worked expeditiously to identify and contact potential new Plaintiffs. Throughout the identification process, Plaintiff's counsel kept Defendants' counsel updated and provided the potential names of the new Named Plaintiffs that were under consideration. Plaintiff's counsel has continued to confer with Defendants' counsel about potential lead plaintiffs and about the alleged existence of arbitration agreements and the scope of alleged coverage. Defendants have not provided any alleged arbitration agreements for any of the proposed new lead Plaintiffs.

II. ARGUMENT

Under Fed. R. Civ. P. 15(a)(2), leave to amend pleadings should be “freely” given “when justice so requires.” The Supreme Court has stated that “[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, etc.—the leave sought should, as the rules, require, be ‘freely given.’” *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also Louisiana School Employees’ Retirement System v. Ernst & Young, LLP*, 622 F.3d 471, 486 (6th Cir. 2010) (stating that Rule 15 “plainly embodies a liberal amendment policy.”); *Duggins v. Steak N Shake, Inc.*, 195 F.3d 828, 834 (6th Cir. 1999) (“[W]here the underlying facts would support a claim, leave to amend should be granted, except in cases of undue delay, undue prejudice to the opposing party, bad faith, dilatory motive, repeated failure to cure deficiencies by amendment previously allowed, or futility.”).

To deny a motion to amend, a court must find “at least some significant showing of prejudice to the opponent.” *Moore v. City of Paducah*, 790 F.2d 557, 562 (6th Cir. 1986). “[D]elay alone, regardless of its length is not enough to bar [amendment] if the other party is not prejudiced.” *Id.* at 560.

Defendants will not be prejudiced by amendment. Defendants are already on

notice that the new Plaintiffs have the same allegations as the original plaintiff Sarah Bryant and the contents of those allegations. Defendants were provided the names of the potential new Plaintiffs and which store(s) they worked. Judicial economy would be best served by allowing the amendment.

III. CONCLUSION

Wherefore, Plaintiff respectfully requests that this Court grant this Motion; grant Plaintiff leave to file a First Amended Complaint to add the newly named Plaintiffs pursuant to Fed. R. Civ. P. 15(a); and allow Plaintiff to file the proposed First Amended Complaint and Jury Demand, which are attached as **Exhibit 1** to this Motion for the Court's consideration.

Respectfully submitted,

/s/ David M. Blanchard

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Counsel for Plaintiffs and the Putative Collective

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2024, my paralegal, Natalie M. Walter, electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Respectfully submitted,

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